

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BLVD.
LENEXA, KANSAS 66219

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY-REGION 7
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BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
Sioux City Foundry Company) Docket No. CWA-07-2016-0083
Sioux City, Nebraska,)
) COMPLAINT AND
Respondent) CONSENT AGREEMENT/
) FINAL ORDER
)
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))
_____)

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Complainant, the United States Environmental Protection Agency, Region 7 (“EPA”) and Respondent, Sioux City Foundry Company, have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that the Respondent, Sioux City Foundry Company, has violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and regulations promulgated thereunder.

Parties

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 (collectively referred to as the “Complainant”).

5. Sioux City Foundry Company, referred to as “Respondent”, is and was at all relevant times a corporation under the laws of the State of Iowa.

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, provides that pollutants may be discharged in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

7. The CWA prohibits the “discharge” of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

Stormwater

8. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA requires, in part, that a discharge of stormwater associated with an industrial activity must conform with the requirements of a NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

9. Pursuant to Section 402(p) of the CWA, the EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

10. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

11. 40 C.F.R. § 122.26(b)(14) defines “storm water discharge associated with industrial activity,” as “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw material storage areas at an industrial plant.” Included in the categories of facilities considered to be engaging in “industrial activity” are facilities under Standard Industrial Classifications 33, which includes establishments primarily engaged in primary metals. *See* 40 C.F.R. § 122.26(b)(14)(ii).

12. The Nebraska Department of Environmental Quality (“NDEQ”) is the state agency with the authority to administer the federal NPDES program in Nebraska pursuant to Section 402 of the CWA. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

13. The NDEQ issued a Nebraska General Permit for Stormwater Runoff Associated with Industrial Activity (“General Permit”) in 1998, which governed stormwater discharges associated with industrial activity for categories of facilities generally involved in materials

handling, manufacturing, transportation, or production. Sioux City Foundry Company was required to submit a new Notice of Intent (“NOI”) by January 1, 2012, in order to maintain authorization to discharge industrial stormwater.

14. Sioux City Foundry, at the time of the inspection described below, had not submitted an NOI to NDEQ to maintain authorization to discharge industrial stormwater.

15. The principal requirement of the General Permit is for the owner to develop and implement a Stormwater Pollution Prevention (“SWP2”) plan. The SWP2 plan must contain certain items which are specified in the General Permit, and the SWP2 plan must specify the Best Management Practices (“BMPs”) (structural, non-structural, and managerial/administrative) to be employed and what controls will be implemented to minimize the contamination of stormwater runoff associated with industrial activity from the site.

EPA’s General Allegations

16. Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

17. Respondent is and was at all times relevant to this action the owner and operator of a gray and ductile iron foundry (“facility” or “site”), operating under SIC code 3321, located at 2400 G Street, South Sioux City, Nebraska.

18. Stormwater, snow melt, surface drainage and runoff water leaves Respondent’s site and discharges to the Missouri River.

19. Stormwater contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

20. The site has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14), and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

21. The Missouri River is a “navigable waters” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

22. Stormwater runoff from Respondent’s industrial activity results in the addition of pollutants from a point source to navigable waters, and thus is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

23. Respondent’s discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(iv), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

24. On June 9, 2015, the EPA performed an Industrial Stormwater Compliance Evaluation Inspection (“Inspection”) of Respondent’s site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent’s compliance with the CWA. A Notice of Potential Violation was issued at the conclusion of the inspection.

EPA’s Specific Allegations

Count 1- Unauthorized Discharge

25. The facts stated in Paragraphs 1 through 24 above are re-alleged and incorporated herein by reference.

26. During the EPA Inspection, the inspector observed the facility and determined industrial stormwater is discharged from the facility at the north and northwest portion of the facility through a culvert constructed through and under the berm and Foundry Road, to the Sioux City, Nebraska municipal storm sewer system to the Missouri River.

27. The facility since January 1, 2012, as described above, did not have a NPDES permit authorizing the discharge of industrial stormwater, so that each discharge of pollutants from the facility, constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

28. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$187,500.

CONSENT AGREEMENT

29. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.

30. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA’s jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.

31. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.

32. Respondent waives its right to contest any issue of fact or law set forth above, and their right to appeal this Consent Agreement/Final Order.

33. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney’s fees incurred as a result of this action.

34. In settlement of this matter, Respondent shall complete the following Supplemental Environmental Project (“SEP”), which the parties agree is intended to secure significant environmental or public health protection and improvements.

- a. Project Description: Respondent will replace standard facility light fixtures with energy-efficient, light-emitting diodes (LED) at its facility, located at 2400 G Street, South Sioux City, Nebraska.
- b. SEP Cost: the total expenditure for the SEP shall be not less than \$41,000.
- c. Completion Date: All work on the project shall be completed and in full operation by no later than September 1, 2018.

35. Within thirty (30) days of the SEP Completion Date, as identified above, Respondent shall submit a SEP Completion Report to EPA.

- a. The SEP Completion Report shall contain the following:
 - (i) A detailed description of the SEP as implemented;
 - (ii) Itemized costs, documented by copies of records such as purchase orders, receipts or canceled checks; and
 - (iii) The following certification signed by Respondent or its authorized representative:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

- b. The SEP Completion Report and all other submittals regarding the SEP shall be sent to:

Delia Garcia, or her successor
WWPD/WENF
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

- c. Respondent agrees that failure to submit the SEP Completion Report required by subsections a. and b. above shall be deemed a violation of this Consent Agreement and Order and Respondent shall become liable for stipulated penalties described below.

36. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

37. Stipulated Penalties for Failure to Complete SEP/Failure to Spend Agreed-upon Amount:

- a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the SEP Cost set forth above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - (i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this Consent Agreement and Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$41,000;
 - (ii) If the SEP is completed in accordance with this Consent Agreement, but the Respondent spent less than 85 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of the calculated difference between the \$41,000 and the amount of spent;
 - (iii) Respondent shall pay a stipulated penalty in the amount of \$100 for each day it fails to submit the SEP Completion Report after the due date specified above, until the report is submitted.
- b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- c. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Interest and late charges shall be paid as stated below. Method of payment shall be in accordance with the provisions below.
- d. The EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement/Final Order.

38. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Defendant in good faith estimates that the cost to implement the SEP is \$41,000;
- b. That, as of the date of executing this Consent Agreement/Final Order, Respondent is not required to perform or develop the SEP by any federal, state,

or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

- c. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement/Final Order;
- d. That Respondent has not received and will not receive credit for the SEP in any other enforcement action;
- e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity; and
- f. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

39. Respondent further certifies that it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 34.

40. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: *"This project was undertaken in connection with the settlement of an enforcement action taken on behalf of the United States Environmental Protection Agency to enforce federal laws."*

41. The undersigned representative(s) of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

42. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

43. Respondent certifies by the signing of this Consent Agreement/Final Order that to the best of its knowledge, Respondent is in compliance with all requirements of the CWA, 33 U.S.C. §1251 *et seq.*, and all regulations promulgated there under.

Penalty Payment

44. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of **Twenty Thousand Dollars**

(\$20,000) pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to be paid in four installments of Five Thousand Dollars (\$5000) each due on November 1, 2016, March 1, 2017, July 1, 2017, and any remaining installment so that the penalty is paid in full no later than one year after signature of this Consent Agreement/Final Order as set forth below.

45. The payment of penalties must reference docket number “CWA-07-2016-0083” and be remitted using one of the payment methods specified in Appendix A to this Order.

46. Copies of the checks or verification of another payment method for the penalty payments remitted as directed by above, shall be mailed to:

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Melissa Bagley
Assistant Regional Counsel
U.S. Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

47. Respondent agrees that no portion of the civil penalty or interest paid by Respondent, and that no expenses incurred by Respondent in performing the SEP, pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

48. Respondent understands that, pursuant to 40 C.F.R. § 13.18, interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

Effect of Settlement and Reservation of Rights

49. Respondent’s payment of the entire civil penalty, including the performance of the SEP or payment of stipulated penalties pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for alleged violations identified in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

50. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in this Consent Agreement/Final Order.

51. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

52. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

53. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

General Provisions

54. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

55. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry by the authorized Regional official and upon filing with the Regional Hearing Clerk U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

56. The State of Nebraska has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

57. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

58. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

For the Complainant, United States Environmental Protection Agency, Region 7:

9-28-16
Date

Karen A. Flourney
Karen A. Flourney
Director
Water, Wetlands and Pesticides Division

Melissa Bagley
Melissa Bagley
Assistant Regional Counsel
Office of Regional Counsel

For the Respondent, Sioux City Foundry Company:



Signature

AUGUST 16, 2016
Date

Andrew M Galinsky
Name

CEO Sioux City Foundry Co.
Title

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FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.



for Mark Hague

Regional Administrator

9.29.16

Date

IN THE MATTER Of Sioux City Foundry Company, Respondent
Docket No. CWA-07-2016-0083

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy emailed to Attorney for Complainant:

bagley.melissa@epa.gov

Copy by First Class Mail to Respondent:

Registered Agent
Dan Plesher
Sioux City Foundry Company
2400 G Street
South Sioux City, Nebraska 68776

Mr. Andrew Galinsky
Sioux City Foundry Company
801 Division Street
Sioux City, Iowa 51105

Dated: 9/29/16


Kathy Robinson
Hearing Clerk, Region 7